



Significant Victory for Public Employers: Dual Function Firefighters/Paramedics Are Partially Exempt Says DOL

Less than three months after IPMA-HR submitted an opinion letter request on behalf of public sector agencies throughout the country, to the Department of Labor, Wage and Hour Division, the Association received a response that will make it easier for public agencies around the country to properly classify their dual-function firefighters/paramedics.

Larry Lorber, a partner with the law firm of Proskauer Rose, LLP and counsel to the association, noted that this letter “provides absolute guidance for agencies on how to staff and employ dual-function firefighters/paramedics and in the right circumstances provides an absolute defense.”

“The key points here are that a jurisdiction be able to show that the dual-function firefighters/paramedics are responsible for and trained in fire suppression and otherwise fit the definition of section 203(y),” continued Lorber.

The opinion letter is unequivocal, Alfred B. Robinson, acting director of the wage and hour division wrote, “Based on a review of the information provided, it is our opinion that the dual-function firefighter/paramedics described in your letter qualify for the partial overtime exemption.”

The issue of whether or not dual-function firefighters/paramedics are partially exempt has a long history. Under the FLSA, firefighters employed by public agencies are entitled to overtime after working 53 hours per week, instead of the standard 40 hours per week. For agencies that use a 28 day work period, firefighters may work 212 hours before becoming entitled to overtime. This allows for “platoon” scheduling, for example where firefighters work 24 hours on and 48 hours off.

In 1999, Congress clarified that in most cases where a city or county government operates an integrated fire suppression and emergency response department, the dual-function firefighters/paramedics will also qualify for the partial exemption from overtime, allowing these cross-trained individuals to work platoon schedules along-side their firefighter counterparts.

However, the law was brought into question when the United States Court of Appeals for the Ninth Circuit ruled against the city of Los Angeles in the case, *Cleveland v. City of Los Angeles*, 420 F.3d 981 (2005). In that case the court ruled that the dual function firefighters/paramedics did not have responsibility for fire suppression.

According the Ninth Circuit, such employees must “have some real obligation or duty” to engage in fire suppression. In the DOL opinion letter, Robinson states that in the IPMA -HR example, the dual-function firefighters/paramedics do have that obligation and duty and provided a six-factor analysis, including the fact that they carry firefighting gear and breathing equipment, that paramedic ambulances are always dispatched to fire scenes, and a number of other fact specific incidences showing that the dual function firefighters/paramedics do have responsibility for fire suppression.

Robinson concluded, “In this case, the dual-function firefighter/paramedics you describe are employed in fire protection activities under section 3(y) of the FLSA. They are trained in fire suppression, have the authority and responsibility to engage in fire suppression, and are engaged in fire suppression or response to emergencies.”

A copy of the opinion letter is available on the [IPMA-HR Website](#).

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